

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Broan NuTone LLC,

Plaintiff,

v.

Travelers Property Casualty Corp., a Connecticut corporation, and The Travelers Indemnity Company of Illinois, an Illinois corporation,
Defendants.

Case No.: 02-CV-4627

**PLAINTIFF BROAN NUTONE LLC'S FOURTH SUPPLEMENTAL BRIEF IN
OPPOSITION TO TRAVELERS' MOTION TO DISMISS OR TRANSFER**

COMES NOW, Plaintiff Broan NuTone, LLC, by and through its counsel, Jack E. Hall, Esq., and Eckert Seamans Cherin & Mellott, LLC., and files the within Fourth Supplemental Brief In Opposition to Travelers' Motion to Dismiss Or Transfer:

I. STATEMENT OF FACTS

Currently pending before this Honorable Court is Travelers' **Motion to Dismiss and Alternative Motion to Transfer Venue and Consolidate**. Travelers filed a brief in support of that motion, to which Broan filed a brief in opposition.

On October 22, 2002, Broan filed a Supplemental Brief, which attached for this Court's consideration an order from the United States District Court of the Western District of Tennessee, which Order denied Traveler's parallel motion to dismiss or, alternatively to transfer and consolidate.

On October 24, 2002, Brian filed a second supplemental brief, which attached for this Court's consideration an order from the United States District Court of the Western District of Tennessee, which Order granted Broan's motion to sever and transfer Traveler's action in that court by which Travelers attempted to litigate all of its claims in a single action. The Court's order was attached, and set forth that an opinion and order would follow.

On October 28, 2002, Broan filed third supplemental brief, which attached for this Court's consideration the 13 page Opinion and Order referenced in the preceding brief (filed in Wisconsin on October 22, 2002). The opinion and order set forth the rationale employed by the

Wisconsin Court in denying Traveler's attempt to litigate all of its claims in that single jurisdiction.¹

On October 31, 2002, Travelers served and sent for filing its supplemental brief in support of its motion to dismiss. This fourth supplemental brief is filed in response.

II. ARGUMENT

In Travelers Supplemental Brief, Travelers argues first that the:

denial was unaccompanied by either a written decision or any legal rationale. As such, this Court should not consider the denial of that motion as having any persuasive weight on this Court's decision on the instant matter. That rationale of Judge McCalla on the Motion to Dismiss cannot be ascertained, and therefore, should be afforded no weight by this Court.

Travelers' Brief at 1-2. As set forth above, the Wisconsin Opinion was filed by that Court on October 22, 2002. Presumably, Travelers received a copy. That Opinion was again served on Travelers on October 25, 2002, by Broan via the third supplemental brief. Again, presumably, Travelers received that opinion.

Having presumably received the Wisconsin Court's decision on *two occasions*, Travelers represents to this Court, without any developed argument, authority or rationale, that the Wisconsin Order cannot be afforded weight because the Court's rationale cannot be determined, when the Court's rationale has been set forth for Travelers twice.

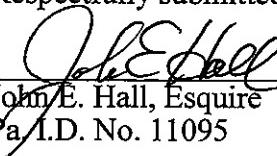
It does appear, however, that Travelers concedes defeat on its motion; none of the "three options" Travelers declares to remain available to this Court includes transferring the action to Wisconsin. Rather, Travelers takes the position that (1) parallel actions could be maintained in this Court; (2) this action could be dismissed and the transferred Travelers action could be maintained, or (3) both actions could be maintained and consolidated.

Broan agrees that there is little sense in maintaining separate parallel actions, and is not adverse to either option (2) or (3).

For these reasons, Plaintiff Broan NuTone, LLC, respectfully requests that this matter be allowed to proceed, either by way of consolidated action or by way of the action transferred from Wisconsin.

¹The supplemental brief was served on October 25, 2002.

Respectfully submitted,


John E. Hall, Esquire
Pa. I.D. No. 11095

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-6000

Attorney for Plaintiff Broan NuTone LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Fourth Supplemental Brief In Opposition to Travelers' Motion to Dismiss Or Transfer** has been served upon all parties, or their counsel of record, this 6th day of November, 2002 as follows:

Patrick J. Moran, Esq.
Francis R. Gartner & Associates
960-B Harvest Drive, Suite 210
Blue Bell, PA 19422-1969

- [X] Via Prepaid First Class United States Mail
[] Via Overnight Courier Delivery
[] Via Facsimile Transmission:
[] Via Hand Delivery
[] Via Email:



John E. Hall, Esquire